

**02-0175 K.B.F. v. Super Target Issued: 5/17/05**

K. B. F. asks the Utah Labor Commission to review Administrative Law Judge Marlowe's determination of Mr. F.'s claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

**BACKGROUND & ISSUE PRESENTED**

On February 20, 2003, Mr. F. filed an application for occupational disease benefits for carpal tunnel syndrome and bilateral shoulder impingement syndrome. On October 30, 2004, Judge Marlowe awarded temporary total disability compensation and medical benefits to Mr. F.. However, Judge Marlowe dismissed Mr. F.'s request for permanent disability compensation because he had not submitted any evidence to establish a permanent work-related disability.

In requesting Commission review of Judge Marlowe's decision, Mr. F. asks that he be directed to a physician who can perform an impairment rating, or that his claim for permanent disability compensation be dismissed without prejudice.

**FINDINGS OF FACT**

The Commission affirms and adopts Judge Marlowe's findings of fact.

**DISCUSSION AND CONCLUSION OF LAW**

As noted in Judge Marlowe's decision regarding Mr. F.'s claim for permanent disability compensation, "[t]here is nothing contained in the evidentiary record supporting payment of [that] type of compensation." On that basis, Judge Marlowe dismissed the claim.

The Commission views Mr. F.'s claim for permanent disability compensation as having been dismissed "without prejudice." Mr. F. may, therefore, reassert that claim by filing a new application with the Commission at such time as he is able to provide medical documentation that he suffered a permanent impairment from his work at Super Target.

**ORDER**

The Commission affirms Judge Marlowe's decision with clarification that Mr. F.'s claim to permanent disability compensation is dismissed "without prejudice." It is so ordered.

Dated this 17<sup>th</sup> day of May, 2005.

R. Lee Ellertson, Commissioner